

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1242 – SB 1360

March 4, 2014

SUMMARY OF ORIGINAL BILL: Grants the Commissioner of the Department of Financial Institutions (DFI) the power to enforce any provision of Tennessee Code Annotated, Title 47, against any entity regulated by the Commissioner.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$31,300/One-Time/DFI
\$2,031,600/Recurring/DFI

SUMMARY OF AMENDMENT (012395, 013508): Deletes all language after the enacting clause. Prohibits any person from engaging in business of litigation financing without registering as a litigation financier. Establishes that a litigation financier that is a business entity or partnership is registered if: it has filed a surety bond in the amount of \$50,000; it has a status of active and is in good standing as reflected in the records of the Secretary of State (SOS); and its organizational document contains a statement that it shall be designated as a lawsuit funder pursuant to this part. Establishes further that a litigation financier that is not a business entity or partnership is registered in this state if: it has filed a surety bond in the amount of \$50,000; and it files an application for registration as a lawsuit funder on a form prescribed by the SOS, along with a filing fee of \$100, that contains specified information. Requires a litigation financier to amend its registration with the SOS within 30 days whenever the information contained in the records of the SOS becomes inaccurate or incomplete in any respect. Requires a litigation financier that is not a business entity or partnership to amend its registration with the SOS by filing an amendment on a form prescribed by the SOS, along with a filing fee of \$20. Authorizes the SOS to collect a \$20 fee for copying all filed documents pursuant to this Act and to promulgate rules in implementing this chapter, including but not limited to, the adoption of fees to cover any administrative costs relating to administering the act.

Establishes requirements to be fulfilled by litigation financiers engaged in litigation financing. Establishes prohibitions for litigation financiers engaged in litigation financing. Requires litigation financing contracts to contain specified disclosures, which shall constitute material terms of the contract. Establishes that any violation of this chapter will make the contract unenforceable by the litigation financier, the consumer or any successor-in-interest to the litigation financing contract. Grants the power and authority to the Attorney General to enforce the provisions of this chapter in his or her discretion.

Requires all consumers entering into litigation financing agreements to pay the litigation financier an annual fee of up to 10 percent of the original amount of money provided to the consumer for the litigation financing transaction, not to be charged more than one time each year with regard to any single legal claim, regardless of the number of litigation financing transactions that the litigation financier enters into with the consumer with respect to such legal claim. Limits litigation financing transactions to a maximum term of three years and limits the yearly fee, including any underwriting and organization fees, and any other charges, fees or consideration, to a maximum of \$360 per year, up to a maximum of 3 years, for each \$1,000 of the unpaid principal amount of the funds advanced to the consumer. Establishes that the maximum yearly fee shall not include the annual fee of up to 10 percent of the original amount of money provided to the consumer for the litigation financing transaction. Prohibits litigation financiers from entering into an agreement with a consumer that has the effect of incorporating the consumer's obligations to the litigation financier that are contained in the original litigation financing transaction into a subsequent litigation financing transaction.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue – \$5,000/One-Time/Secretary of State

Increase State Expenditures – \$5,000/One-Time/Secretary of State

Assumptions for the bill as amended:

- Based on information provided by the SOS, there will be a one-time increase in state expenditures of \$5,000 to develop a Litigation Financing Registration System. Any increase in state expenditures for training of staff on the new system is estimated to be not significant and can be accomplished utilizing existing resources.
- The SOS will charge the appropriate filing fees and shall adopt other fees to cover any administrative costs relating to administering the act. It is estimated that the one-time increase in state revenue will offset the one-time increase in state expenditures and will equal \$5,000. Any increase in recurring state revenue from additional registration and amendments to registration fees is estimated to be not significant.
- Establishing requirements, prohibitions, and contract specifications for litigation financiers, limiting the litigation financing agreements to a maximum term of three years, and limiting the fees, and other charges as specified may result in a fiscal impact that will be borne by the private sector. Any fiscal impact to state or local government is estimated to be not significant.
- Any increase in state expenditures to the Attorney General to enforce the provisions of this chapter, in his or her discretion, is estimated to be not significant and can be accommodated within existing resources without an increased appropriation or a reduced reversion.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" and last name "Geise" clearly distinguishable.

Lucian D. Geise, Executive Director

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